

CHAPTER 45-05-05

RISK RETENTION AND PURCHASING GROUPS

Section	
45-05-05-01	Definitions
45-05-05-02	Financial Statements, Reports, Examinations
45-05-05-03	Risk Retention Groups Not Chartered in This State - Registration
45-05-05-04	Liability Purchasing Group Notice of Intent
45-05-05-05	Updates and Amendments
45-05-05-06	Risk Retention Group Representatives and Purchasing Group Representatives
45-05-05-07	Group Location
45-05-05-08	Insurance Purchase
45-05-05-09	Risk Retention Group Representative or Purchasing Group Representative Memorandum
45-05-05-10	Direct Production
45-05-05-11	Solicitation by Nonresident
45-05-05-12	Severability

45-05-05-01. Definitions. As used in this chapter:

1. "Authorized to transact insurance in this state" and "admitted" means an insurer authorized by a subsisting certificate of authority issued by the commissioner to transact insurance in this state.
2. "Commissioner" means the insurance commissioner of North Dakota.
3. "Federal Liability Risk Retention Act of 1986" means that federal legislation which authorized qualified individuals or organizations to form special association insurance captives or to join together to purchase liability insurance on a group basis enacted as 15 U.S.C. 3901, et seq.
4. "Liability insurance coverage" means liability insurance policy or endorsement forms under which a liability risk retention group or liability insurer may undertake to indemnify a risk retention group or purchasing group member against liability arising from similar hazards or risk contingencies including, but not limited to, those liability insurance coverages commonly referred to in the industry as products-completed operations' liability, liquor liability, hospital professional liability, physicians', surgeons', and dentists' liability, lawyers' professional liability, elevator liability, storekeepers' liability, governmental entity general liability, public officials' errors and omissions, school board errors and omissions, directors' and officers' errors and omissions, oilfield general liability, day care general liability, outfitters' and guides' general liability, recreational area general liability, long haul truckers' liability, garage liability, pollution liability, etc.

5. "Purchasing group" means any group meeting the requirements of a purchasing group contained in North Dakota Century Code chapter 26.1-46.
6. "Purchasing group representative" means any individual, partnership, or corporation appointed by a purchasing group for the purpose of providing insurance to the members of the purchasing group or for the purpose of soliciting members for the purchasing group.
7. "Risk retention group" means any group meeting the requirements of a risk retention group contained in North Dakota Century Code chapter 26.1-46.
8. "Risk retention group representative" means any individual, partnership, or corporation appointed by a risk retention group for the purpose of providing insurance to the members of the risk retention group.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-02. Financial statements, reports, examinations. Any risk retention group doing business in this state shall submit to the commissioner all of the following:

1. By March first of each year, a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist according to criteria established by the national association of insurance commissioners.
2. A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.
3. A copy of any audit performed with respect to the risk retention group.
4. This section does not apply to risk retention groups doing business in this state which have fewer than twenty-six resident members or insureds.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-03. Risk retention groups not chartered in this state - Registration.

1. Any risk retention group chartered in a state other than North Dakota and not holding a subsisting certificate of authority issued by the commissioner of the state of North Dakota, before offering liability insurance as a risk retention group on any risk located, resident or to be performed in this state, shall:
 - a. Register with the commissioner in the form and manner prescribed by the commissioner, a statement sworn to by the president or chief executive officer and the secretary of the risk retention group providing such information and documentation as the commissioner shall require pursuant to North Dakota Century Code section 26.1-46-03.
 - b. File with the commissioner a copy of the risk retention group's charter showing that it has been organized primarily for the purpose of assuming and spreading all, or any portion, of the liability exposure of the group members.
 - c. File with the commissioner a copy of the risk retention group's certificate of authority or license issued in its state of domicile authorizing it to transact business as an insurance company.
 - d. File with the commissioner a copy of the risk retention group's most recent annual financial statement which must be certified by an independent public accountant.
2. Any risk retention group chartered in a state other than North Dakota and not holding a subsisting certificate of authority issued by the commissioner of the state of North Dakota which has registered with the commissioner pursuant to Section 3(d) of the Federal Liability Risk Retention Act of 1986 or North Dakota Century Code section 26.1-46-03 prior to October 1, 1989, shall comply with subsection 1 by registering in the form prescribed by subsection 1 on or before December 1, 1989.
3. The statement of registration appointing the commissioner as agent for the purpose of receiving legal documents and service of process, required in North Dakota Century Code sections 26.1-46-03 and 26.1-46-07 shall be irrevocable, and must be in substantially the same form as that show in exhibit A.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-04. Liability purchasing group notice of intent.

1. Any purchasing group which intends to do business in this state, before soliciting any member to insure through the group any liability

risk located, resident or to be performed in this state, shall furnish notice of its intent to do business to the commissioner, in the form and manner prescribed by the commissioner, sworn to by the president, chief executive officer, secretary, partner, trustee, or such other officer or party who, under the organizational plan of the group, has authority to bind the group with his signature, on forms the commissioner designates and furnishes, providing such information and documentation as the commissioner shall require pursuant to North Dakota Century Code section 26.1-46-07.

2. Any purchasing group which has filed with the commissioner its notice of intent to do business pursuant to Section 4(d)(1) of the Federal Liability Risk Retention Act of 1986 or North Dakota Century Code section 26.1-46-07 prior to October 1, 1989, shall comply with subsection 1 by registering in the form prescribed by subsection 1 on or before December 1, 1989.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-05. Updates and amendments.

1. Any risk retention group or purchasing group authorized to do business in the state of North Dakota shall notify the commissioner in writing within thirty days of any changes in its operations, which result in the registration or notice then on file containing false, inaccurate, or misleading information, including the solicitation or writing of any liability insurance coverage in addition to that for which it is registered, so as to correct such false, inaccurate, or misleading information. The commissioner may request such additional information and documentation pertaining to such notice as the commissioner deems necessary provided, however, no such request shall delay the effective date of the notice.
2. Any risk retention group or purchasing group authorized to do business in the state of North Dakota, on or before March first of each year, by sworn affidavit, shall certify to the commissioner as to the continued accuracy of the information on file or as amended by notice filed pursuant to subsection 1, and as to its continued intent to be registered and do business in this state.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-06. Risk retention group representatives and purchasing group representatives.

1. License requirement. No person, resident or nonresident in this state, may act as or hold himself out in this state to be a risk retention group representative for a risk retention group, or a purchasing group representative for a purchasing group which solicits members for the purpose of selling liability insurance coverage, purchases liability insurance coverage for group members located within this state or otherwise does business in this state unless then licensed as such under these rules.
2. Any person, resident or nonresident in this state, acting as or holding himself out in this state to be a risk retention group representative or a purchasing group representative must either:
 - a. Hold a current North Dakota license as agent or broker, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota; or
 - b. Be the holder of a current North Dakota nonresident license as agent or broker in another state, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota.
3. Any person acting as a risk retention group representative or purchasing group representative in compliance with subdivision a or b of subsection 2 shall otherwise be subject to and comply with the provisions of North Dakota Century Code chapter 26.1-46 as they pertain to agents and brokers.
4. Exceptions to license requirement. Risk retention group representative and purchasing group representative for the purpose of licensing does not include:
 - a. Any officer, director, owner, partner, trustee, or full-time salaried employee of a risk retention group or purchasing group; and
 - b. Any telemarketing or mass mailing organization or any radio or television station or network or, newspaper or magazine publisher or distributor which makes statements or carries advertisements for a risk retention group or purchasing group to the extent only general, nonrisk specific information is given concerning the Federal Liability Risk Retention Act, North Dakota Century Code chapter 26.1-46, and the risk retention group or purchasing group and no application for insurance is received, no underwriting information is taken, and no insurance rate or premium is quoted or collected.
5. Licensing of partnership or corporation.

- a. A partnership or corporation may be licensed as a risk retention group representative or purchasing group representative. Each general partner and each other individual authorized to act for the partnership and each individual authorized to act for the corporation must be named in the license or registered with the commissioner and shall qualify as through an individual licensee; and
 - b. The licensee shall promptly notify the commissioner of any changes among its members, directors, officers, and other individuals designated in or registered as to the license.
6. Risk retention group representative and purchasing group representative bond. Prior to issuance of an appointment as a risk retention group representative or purchasing group representative for any risk retention group or insurer not chartered in this state, the applicant shall file with the commissioner, and shall keep in force for as long as such an appointment remains in effect, a bond in favor of the state of North Dakota in the penal sum of one thousand dollars, with an authorized corporate surety the commissioner approves, conditioned that he will conduct business under his risk retention group or purchasing group license in accordance with North Dakota Century Code chapter 26.1-46 and this chapter and that he will promptly remit the taxes pursuant to North Dakota Century Code section 26.1-46-03. Any risk retention group representative or purchasing group representative licensed as a surplus line broker in the state of North Dakota and maintaining a bond pursuant to North Dakota Century Code section 26.1-26-18 or previously appointed by a risk retention group or insurer not chartered in this state group or unauthorized insurer and maintaining a bond pursuant to this section shall not be subject to any additional bond requirement. The aggregate liability of the surety for any claims on the bond may not exceed the penal sum of the bond. The bond shall not be terminated unless not less than thirty days' prior written notice thereof is given to the licensee and filed with the commissioner.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-07. Group location. For the purposes of this chapter, a purchasing group must be deemed located in this state if any member of said group is located or resident in this state.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-08. Insurance purchase. Any purchasing group duly authorized to do business in the state of North Dakota may purchase insurance only from the following sources:

1. A risk retention group authorized to do business in this state.
2. An admitted insurance carrier.
3. An authorized surplus lines carrier listed on the commissioner's white list, only if the purchase is effected through a licensed surplus lines broker who has been appointed by the purchasing group.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-09. Risk retention group representative or purchasing group representative memorandum. Any risk retention group representative or purchasing group representative effecting insurance on any risk located, resident or to be performed within or properly allocated to this state with an unauthorized risk retention group or unauthorized insurer, pursuant to the Federal Liability Risk Retention Act of 1986 and this chapter, shall file with the commissioner a summary memorandum, in a form the commissioner prescribes or accepts, setting forth the facts concerning the placement of such insurance so as to identify the coverage and the tax payable to the state relative thereto pursuant to North Dakota Century Code chapter 26.1-44. The risk retention group representative or purchasing group representative shall file this memorandum with the commissioner on or before April first of each year in which the premium or consideration is due. Any risk retention group representative or purchasing group representative may contract with the unauthorized risk retention group or unauthorized insurer or with a purchasing group for which it acts to provide for the unauthorized risk retention group, the unauthorized insurer, or the purchasing group filing this memorandum on behalf of the risk retention group representative or purchasing group representative in accordance with this section, provided the risk retention group representative or purchasing group representative notifies the commissioner of such delegation and files with the commissioner a copy of the contract authorizing such alternative method of filing prior to the effective date of such delegation.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-10. Direct production.

1. Any risk retention group required to register in this state pursuant to Section 3(d) of the Federal Liability Risk Retention Act of 1986 or section 45-05-05-02 which utilizes risk retention representatives in soliciting, negotiating, procuring, or providing liability insurance for its members located or resident within this state shall do so only through risk retention

group representatives licensed in this state pursuant to North Dakota Century Code chapters 26.1-26, 26.1-44, and 26.1-46 and this chapter provided, however, nothing herein may be construed to prevent such a risk retention group from soliciting, negotiating, procuring, or providing liability insurance for its members located or resident within this state directly through its officers, directors, owners, partners, trustees, or full-time salaried employees not so licensed in this state.

2. Any purchasing group required to file notice of its intent to do business in this state pursuant to Section 4(d)(1) of the Federal Liability Risk Retention Act of 1986, North Dakota Century Code section 26.1-46-07, or section 45-05-05-03 which utilizes purchasing group representatives in soliciting, negotiating, procuring, or providing liability insurance for its members located or resident within this state shall do so only through purchasing group representatives licensed in this state pursuant to North Dakota Century Code chapters 26.1-26, 26.1-44, and 26.1-46, and this chapter.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-11. Solicitation by nonresident. Risk retention groups and admitted carriers may appoint either resident or nonresident representatives to solicit, negotiate, procure, or provide liability insurance for its members located or resident within this state. However, a risk retention group or purchasing group which purchases insurance from a surplus lines carrier must appoint a resident surplus lines broker pursuant to the requirements of North Dakota Century Code section 26.1-26-17.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-12. Severability. If any section of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this chapter and the application of such section to other persons and circumstances shall not be affected thereby.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

**STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT
APPLICATION FOR REGISTRATION AS A PURCHASING GROUP**

We, the undersigned President (or Chief Executive Officer) and Secretary, on behalf of _____, make
(Name of Purchasing Group)
application for registration in North Dakota as a Purchasing Group ("Group") and do hereby affirm that:

1. The Group is domiciled in the State of _____.
2. The Group's principal place of business (street and mailing address) is: _____

3. The Group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations (Give general description of business or activities engaged in by Group members): _____

4. The Group has as one of its purposes the purchase of liability insurance on a group basis.
5. The Group purchases such liability insurance only for its group members and only to cover their similar or related liability exposure, as described in item (3) above.
6. The Group intends to purchase the following lines and classifications of liability insurance: _____

7. The Group intends to purchase the liability insurance described in item (6) above from the following insurance company or companies (Give full name of company and state of domicile): _____

8. The name and address of the broker or agent licensed by the insurance commissioner through whom purchases in North Dakota will be effected are as follows: _____

9. The Group has designated the insurance commissioner of North Dakota to be its agent solely for the purpose of receiving service of legal documents.
10. The Group's federal identification number is: _____

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer

Secretary

Sworn to before me this _____
day of _____, 19__,

Notary Public

State of _____

My Commission Expires: _____

**STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT
APPLICATION FOR REGISTRATION AS
A RISK RETENTION GROUP
(FOREIGN)**

We, the undersigned President (or Chief Executive Officer) and Secretary, on behalf of _____

(Name must include the phrase "Risk Retention Group")
located at _____

make application for registration in North Dakota as a Risk Retention Group ("Group") and do hereby affirm that:

1. The primary activity of this Group consists of assuming and spreading all, or any portion, of the liability exposure of its Group members.
2. The Group is organized for the primary purpose of conducting the activity described under (1) above.
3. The Group is chartered and licensed as a liability insurance company under the laws of the State of _____, and is authorized to engage in the business of insurance under the laws of its chartering state.
4. The Group does not exclude any person from its membership in the Group solely to provide for members of the Group a competitive advantage over such a person.
5. Ownership of the Group consists of one or the other of the following (check one):

_____ the owners of the Group are only persons who comprise the membership of the Group and who are provided insurance by the Group;

_____ the sole owner of the Group is

(Give name and address of organization)

an organization whose members only comprise the membership of the Group, and whose owners are only persons who comprise the membership of the Group and who are provided insurance by the Group.

6. The Group is composed of members who are engaged in the following described business or activities, which are similar or related with respect to the liability to which such members are exposed by virtue of related, similar, or common business,

trade, produce, services, premises or operations (Give general description of business or activities engaged in by Group members):

7. The activities of the Group do not include the provision of insurance other than:
 - a. liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and
 - b. reinsurance with respect to the similar or related liability exposure of another risk retention group (or a member of such other risk retention group) engaged in businesses or activities which qualify such other risk retention group (or member) under item (6) above for membership in this Group.
8. The Group will comply with the unfair claim settlement practices laws of North Dakota.
9. The Group will pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers under the laws of North Dakota.
10. The Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the laws of North Dakota for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.
11. The Group has designated the Insurance Commissioner of North Dakota to be its agent solely for the purpose of receiving service of legal documents or process.
12. The Group will submit to examination by the Insurance Commissioner to determine the Group's financial condition, if:
 - a. the insurance commissioner of the Group's chartering state has not begun or has refused to initiate an examination of the Group; and
 - b. any such examination by the Insurance Commissioner is coordinated so as to avoid unjustified duplication and unjustified repetition.

13. The Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner upon a finding of financial impairment, or in a voluntary dissolution proceeding.
14. The Group will comply with the laws of North Dakota concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.
15. The Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the insurance commissioner alleging that the Group is in hazardous financial condition or is financially impaired.
16. The Group will provide the following notice, in 10-point type, in any insurance policy issued by the Group:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

17. The Group has submitted to the insurance commissioner, as part of this application and before it has offered any insurance in North Dakota, a copy of the plan of operation or feasibility study which it has filed with the insurance commissioner of its chartering state. The plan or study submitted herewith discloses the name of the state in which the Group is chartered, as well as the Group's principal place of business, and such plan or study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the Group intends to offer. The Group will promptly submit to the Insurance Commissioner any revisions of such plan or study to reflect any changes therein including, but without limitation, additional lines of liability insurance which the Group intends to offer, and any change in the designation of the Group's chartering state.
18. The Group has submitted to the insurance commissioner, as part of this application, a copy of the Group's annual financial statement submitted to the state in which it is chartered as an insurance company. The annual financial statement has been certified by an independent public accountant and contains a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. Hereafter, the Group will submit its annual financial statement to the insurance commissioner by March 1 of each year.

19. The Group will not solicit or sell insurance to any person in North Dakota who is not eligible for membership in the Group.
20. The Group will not solicit or sell insurance in North Dakota, or otherwise operate in this state, if the Group is financially impaired or is in a hazardous financial condition.
21. The name and address of the broker(s) or agent(s) licensed by the insurance commissioner through whom purchases in North Dakota will be effected are as follows:

22. The Group's federal identification number is _____.

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer

Secretary

Sworn to before me this day of _____, 19__.

Notary Public, State of:
My Commission Expires:

The (name of group), a [risk retention] [purchasing] group authorized to transact liability insurance under the Federal Liability Risk Retention Act of 1986 and Chapter 26.1-46 of the North Dakota Century Code, domiciled in the State of _____ and whose principal place of business is located at (address) (city) (state) (zip code) does hereby constitute, designate and appoint the Insurance Commissioner of the State of North Dakota, and his successors in office, as its true and lawful agent to receive legal documents and service of process issued against said [risk retention] [purchasing] group in the State of North Dakota. This appointment shall be irrevocable, shall be binding upon the group, and its successors in interest, as to the assets and liabilities of the group and shall remain in full force and effect for so long as there is in force any contract or certificate insuring any member [of the risk retention group] [of the purchasing group] in the State of North Dakota or any obligation of the group arising out of its transactions in the State of North Dakota.

(name)	,	(title)
(company or group name)	,	(street address)
(city)	,	(state) (zip)

(name of

BY: _____

[President, Chief Executive Officer, Secretary, Partner, Trustee, or title of the officer or party who under the organization of the group has authority to bind the group with his signature]

State of _____)
) ss
County of _____)

The foregoing instrument was acknowledged and executed before me this
_____ day of _____, 19__.

NOTARY PUBLIC

(SEAL)

My Commission Expires: _____